THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15685 of 1995

21.11.2006

Between:

Abdul Aziz Khan, S/o.Late Abdul Hadi Khan

..... PETITIONER

AND

Municipal Corporation of Hyderabad, represented by Commissioner/ Special Officer of MCH, Tank Bund, Hyderabad
And another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.15685 of 1995

ORDER:

The petitioner is allegedly owner of land admeasuring Acs.6.24 guntas in survey No.129/48 situated at Shaikpet village of Colconda Mandal in Hyderabad District. The land is comprised in T.S.Nos.3, 7/1, 7/2, 8, 9, 10 and 12 of Ward No.12, Block-K, Road No.12 of Banjara Hills. Originally, the petitioner's predecessor, Aziz Ahmed Khan, was owner of the land and after his demise, petitioner along with other co-sharers succeeded to the property. When attempts were made by third parties to grab a part of the land, petitioner and other co-sharers filed a case being LGC No.5 of 1993 before the Special Court constituted under A.P. Land Grabbing (Prohibition) Act, 1982 (the Act, for brevity) and obtained *ad interim* injunction. The second respondent herein approached the first respondent for sanction of layout under Section 391 of Hyderabad Municipal Corporations Act, 1955 (HMC Act, for brevity) in respect of land admeasuring Acs.2.21 guntas comprised in survey No.129/31. By permit No.457/78, dated 14.7.1995, the first respondent sanctioned layout. Feeling aggrieved by the same, the petitioner filed the instant writ petition seeking invalidation of the layout.

The petitioner alleges that the land in survey No.129/31 was owned by Ahmed Moinuddin, who sold the property in 1344 F to one Krishna Bai. She in turn sold an extent of Acs.1.00 under registered sale deed dated 26.6.1964 to one Raja Bhalerao, who again sold to one C.V.Rajyalakshmi. After death of Krishna Bai, her son Dinakar sold an extent of Acs.0.21 guntas to Induri Ashanna. It is further alleged that the purchasers of the property in survey No.129/31 got individual layouts approved by the first respondent and sold away the lands to various persons for construction of houses and, therefore, no land as such available in survey No.129/31 and the second respondent applied for layout in respect of the land in survey No.129/48.

The petitioner made a representation to the first respondent raising objections for grant of layout in favour of the second respondent. Allegedly these objections were not considered and layout was granted. The first respondent has filed counter affidavit. The factum of the sanction of layout in respect of the land in survey No.129/31 prior to the impugned layout is not specifically denied. Reliance is placed by the first respondent on a letter dated 10.1.1995 purportedly addressed by the District Collector, Hyderabad, to the first respondent to the effect that an extent of Acs.1.29 guntas is available in survey No.129/31. A reference is also made to the letter from the Joint Collector dated

18.8.1992 to the effect that no vacant land is available in survey No.129/31.

Learned Counsel for the petitioner raised mainly two contentions. The grant of permission/sanction to layout submitted by the second respondent without considering the objections filed by the petitioner is illegal and contrary to the provisions of Sections 388, 389 and 390 of HMC Act. Secondly, he would urge that the petitioner herein has filed LGC No.5 of 1993 in which enquiry is in progress and, therefore, the first respondent sanctioned layout in great haste. In support of the first submission, learned Counsel placed strong reliance on the decision of a Division Bench of this Court in **Subash Kumar v Special Officer, HMC**[1].

Learned Standing Counsel for Municipal Corporation of Hyderabad (MCH), who has produced the record, submits that after receiving the representations the matter was referred to the District Collector and layout was sanctioned based on the report of the District Collector. Learned Counsel for second respondent submits that the sale in favour of third respondent is prior to the sale of land in favour of Raja Bhalerao and Ashanna and, therefore, an inference has to be drawn that Krishna Bai and her son sold away the land, which was not available in survey No.129/31.

The Division Bench in **Subash Kumar** (supra) considered the question whether there is any duty cast on the Commissioner of MCH to consider the objections regarding title raised by a third party while considering application for a layout. Answering the question in the affirmative, the Division Bench laid down as under.

> … … It is thus clear from the several provisions referred to above that, an application for sanction of layout has to be made by the owner of the land; the statutory provisions also require that he should enclose to the application his title-deeds and a non-encumbrance certificate in proof of his title, and a free title at that. The expression “owner” is also defined. In such a situation, it must be held that the authority competent to sanction the layout has to be satisfied, before sanctioning, that the applicant for sanction of layout is the owner of the land. That satisfaction has to be arrived at on the basis of the title deed or documents as the case may be, produced by him, and the non-encumbrance certificate. This necessarily means and implies that, if another person comes and says that the applicant is not the owner, the authority has to look into that aspect and decide whether the applicant is the owner, or not, so that the layout applied for by him can be sanctioned, inc case his application is found to be otherwise in order. It is true that, any determination made by the authority or any finding, if it can be called that, of the authority on the said question is not conclusive, and it is always open to the aggrieved person to

> approach the appropriate Court for vindicating or establishing his ownership but, the said determination/finding of the authority is good for the limited purpose of the Act and the Rules, i.e., for the purpose of the sanction of layout. Any decision or decree obtained by a person concerned would certainly be binding upon the authority, and would override any determination/finding of the authority.

In **V.Jaya Prakash v The Commissioner of Municipality, Kapra Municipality**[2], this Court has considered a similar question in the context of the provisions of A.P. Municipalities Act, 1965 (Sections 213 and 215). Having regard to the provisions of Section 215 grounds on which the Commissioner can refuse permission, this Court laid down as under.

> The Municipalities Act is an Act *inter alia* providing for disciplined and planned growth of the municipal area. The power vested in various authorities should be exercised for public good. By exercising power in a manner which would result in dispute, cannot be appreciated. The common law principle of absolute individual right is replaced by the principle of community welfare. Therefore, while passing orders under Section 213 read with Section 215, it is always open to the Commissioner to postpone the decision if there is a dispute between two rival claimants to the property in question. Indeed, when the dispute is *sub judice*, it shall be the duty of the Commissioner to postpone the permission, for the public authority must respect the Court's decision and implement it and/or aid in implementing the same. In this context, a reference may be made to Article 144 of the Constitution of India which is to the effect that all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

In **T.Rameshwar v Commissioner, MCH**[3], the above ratio was held to apply even in the context of HMC Act. Therefore, this Court holds that the enquiry into the objections made by the petitioner at the time of granting permission for layout submitted by the second respondent was not in accordance with law. The petitioner herein in his representation brought to the notice of the Commissioner that LGC No.5 of 1993 is pending and no enquiry is made into this aspect of the matter. On this ground alone, the layout sanctioned to second respondent cannot be held to be legally valid.

In the result, this writ petition is disposed of. The layout sanctioned to the second respondent shall not be given effect to. The matter is remitted to the first respondent to consider afresh, after considering all the objections raised by the petitioner to the sanction of layout in favour of the second respondent. No costs.

November 21, 2006 (**V.V.S.RAO, J**)
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[1] AIR 1985 AP 352
[2] 2006 (4) ALD 807
[3] 2006(3) ALD 337